

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Date: August 23, 2007

LEGEND:

Trust A =

Company =

Hotel =

Partnership =

Trust B =

Holding =

State X =

State Y =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

a =

Dear :

This responds to a letter ruling dated February 21, 2007, submitted on behalf of Trust A and Company, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make (1) an election under § 301.7701-3(c)(1)(i) to classify Company as a corporation for federal tax purposes effective as of Date 1, and (2) an election under section 856(l) of the Internal Revenue Code to treat Company as a taxable REIT subsidiary (“TRS”) of Trust A effective as of Date 1.

FACTS

Trust A is a State X corporation that was formed on Date 2. Trust A plans to elect to be treated as a real estate investment trust (“REIT”) beginning with its tax year that ended Date 3. Company is a limited liability company organized in State Y. Trust A has owned all of the interests in Company at all times since Company issued interests. Trust A owns Hotel and leases Hotel to Company.

Trust A is primarily owned by Partnership, a State Y limited partnership classified as a partnership for U.S. federal tax purposes. Other than Partnership, Trust A has a direct shareholders. The interests in Partnership are owned primarily by Trust B (a publicly traded REIT) and Holding (a limited partnership).

An officer (“Officer”) of both Trust A and Company was charged with the responsibility for filing all forms necessary for Company to be treated as a TRS of Trust A.

On or about Date 4, an officer of Trust B made an inquiry as to the status of the tax filings necessary to treat Company as a TRS of Trust A. This inquiry prompted Officer to ask outside counsel for Holding for assistance in preparing an entity

classification election for Company. A paralegal for the outside counsel prepared a Form 8832, Entity Classification Election, which was executed and filed on Date 5. The Form 8832 indicated that Company elected to be classified as a corporation. In completing the form, the paralegal mistakenly chose an effective date of Date 5, instead of Date 1. When signing the Form 8832, Officer failed to realize that the form listed an incorrect effective date. Moreover, the outside counsel failed to recommend to Officer to also file a Form 8875, Taxable REIT Subsidiary Election, with respect to Company. Officer was unaware that a TRS election also needed to be filed for Company to be treated as a TRS of Trust A.

Trust B subsequently sent Officer a “primary certification” relating to Trust A’s status as a REIT. The certification included a statement as to the timely and proper filing of a TRS election for each entity intended to qualify as a TRS. Officer forwarded the certification to the outside counsel for Holding. The outside counsel returned the certification with minor comments, but did not question the statement regarding the election of TRS status. Officer subsequently executed and returned to Trust B a “reliance certification” attesting to the accuracy of the statements made in the primary certification.

On or about Date 6, the accounting firm engaged to prepare the tax returns for the entities involved in the structure determined that a TRS election had not been filed for Company. On Date 7, the accounting firm also became aware that the Form 8832 filed on behalf of Company mistakenly specified Date 5, instead of Date 1, as the effective date. On Date 8, the accounting firm filed a Form 8875 on behalf of Trust A and Company.

Officer represents that, at all times since Trust A’s formation, Trust A has been organized and has intended to operate in a manner that would permit it to qualify as a REIT. Officer further represents that it had been understood at all relevant times that Company would qualify as a TRS under Section 856(l).

Furthermore, Trust A and Company jointly make the following additional representations:

1. The request for relief was filed by Trust A and Company before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief will not result in Trust A and/or Company having a lower tax liability in the aggregate for all years to which the regulatory election applies than that Taxpayer would have had if the election had been timely made (taking into account the time value of money).

3. Trust A and Company did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time Trust A and Company requested relief and the new position requires or permits a regulatory election for which relief is requested.

4. Being fully informed of the required regulatory election and related tax consequences, Trust A and Company did not choose to not file the election.

LAW AND ANALYSIS

Section 856(l) of the Code provides that a REIT and a corporation (other than a REIT) may jointly elect to treat such corporation as a TRS. To be eligible for treatment as a taxable REIT subsidiary, § 856(l)(1) provides that the REIT must directly or indirectly own stock in the corporation, and the REIT and the corporation must jointly elect such treatment. The election is irrevocable once made, unless both the REIT and the subsidiary consent to its revocation. In addition, § 856(l) specifically provides that the election, and any revocation thereof, may be made without the consent of the Secretary.

In Announcement 2001-17, 8 I.R.B. 716, the Service announced the availability of new Form 8875, Taxable REIT Subsidiary Election. According to the Announcement, this form is to be used for tax years beginning after 2000 for eligible entities to elect treatment as a TRS. The instructions to Form 8875 provide that the subsidiary and the REIT can make the election at any time during the tax year. However, the effective date of the election depends upon when the Form 8875 is filed. The instructions further provide that the effective date on the form cannot be more than 2 months and 15 days prior to the date of filing the election, or 12 months after the date of filing the election. If no date is specified on the form, the election is effective on the date the form is filed with the Service.

Section 301.9100-1(c) of the regulations provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in § 301.9100-1(b) as an election whose due date is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) through (c)(1)(i) sets forth rules that the Internal Revenue Service generally will use to determine whether, under the particular facts and circumstances of each situation, the Commissioner will grant an extension of time for

regulatory elections that do not meet the requirements of § 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of § 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith; and § 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

CONCLUSIONS

Based on the information submitted and representations made, we conclude that Trust A and Company have satisfied the requirements for granting a reasonable extension of time to (1) elect under § 301.7701-3(c)(1)(i) to classify Company as a corporation for federal tax purposes effective as of Date 1, and (2) elect under section 856(l) to treat Company as a Taxable REIT Subsidiary of Trust A effective as of Date 1. Accordingly, the Form 8832 that was filed by Company on Date 5 will be treated as if it had been timely filed to classify Company as a corporation for federal tax purposes effective as of Date 1, and the Form 8875 that was filed by Trust A and Company on Date 8 will be treated as if it had been timely filed to treat Company as a Taxable REIT Subsidiary of Trust A effective as of Date 1.

This ruling is limited to the timeliness of the filing of the Form 8832 and Form 8875. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed with regard to whether Trust A otherwise qualifies as a REIT under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of either Trust A or Company is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Alice M. Bennett
Chief, Branch 3
Office of Associate Chief Counsel
(Financial Institutions & Products)

Enclosures:

Copy of this letter
Copy for section 6110 purposes